

**Witness: Richard A. Soderman  
Request from: Attorney General**

**Question:**

Describe each significant stage of the bidding process to the acceptance of the winning bid. Please include a description of how bidders and bids were eliminated at each stage of the process to reach the accepted bid.

**Response:**

The following is excerpted from the prefiled testimony of Paul Dabbar of JPMorgan, submitted to the Vermont Public Service Board on September 27, 2001 and describes each significant stage of the solicitation process:

The auction process can be broken down into four separate phases: planning, marketing, due diligence, and selection.

**Planning**

The auction process began with an information-gathering planning phase. During this time, VY discussed its auction objectives with JPMorgan - [W]e also reviewed certain terms previously recommended by the DPS, which could potentially be required for the DPS to recommend to [the] Board that it approve a proposed transaction as promoting the public good and as a result, incorporated these into the auction objectives. With the objectives in mind, JPMorgan recommended an auction process whereby each bidder would be allowed access to the Station and VY management before submitting a binding bid.

**Marketing**

Vermont Yankee launched the marketing phase of the auction process with a press release entitled "Vermont Yankee Nuclear Power Corporation retains JPMorgan to lead sale of Vermont Yankee Nuclear Power Station" on March 26, 2001. Vermont Yankee followed with an April 16, 2001, press release entitled "Vermont Yankee Nuclear Power Corporation announces auction of Vermont Yankee Nuclear Power Station / interested parties are asked to contact JPMorgan." During this time, JPMorgan solicited interest from entities believed to be potential bidders, based upon their participation in the nuclear industry as current owners, managers, or manufacturers. This initial solicitation encompassed a broad array of companies in the energy industry, including existing nuclear-plant owners, generating companies, and nuclear-equipment suppliers. With this initial solicitation, JPMorgan distributed a marketing letter, describing the opportunity, and a Confidentiality Agreement, which along with other criteria allows access to non-public information, to this marketing group.

### **Due diligence**

The beginning of the due diligence, which proceeded concurrently with the solicitation efforts I have described, involved the preparation of a confidential-offering memorandum that described the assets and the auction process in detail. The offering memorandum was provided to potential bidders that met the requirements established by JPMorgan for eligibility to participate in the auction. To be eligible, potential bidders were required to sign a Confidentiality Agreement prepared by JPMorgan and to submit technical and financial qualifications that demonstrated their ability to purchase and operate the Station, to which I refer as "Bidder Qualifications."

Bidders meeting these eligibility requirements received a copy of the offering memorandum and several CDs containing a large majority of the information available in the Vermont Yankee data room and a list of answers to "frequently asked questions."

Most of the due diligence in the auction process was intended to occur, and did occur, during the period leading up to the date designated for bid submittal, to which I refer as the "Due Diligence Phase". Bidders were invited to submit confidential questions regarding the assets to VY through JPMorgan. Answers were provided only to the bidder that submitted the particular question. During the Due Diligence Phase, bidders also participated in individual pre-bid meetings during which major topics were presented, additional questions were addressed, and bidders were given the opportunity to make a site visit.

In addition, during the Due Diligence Phase drafts of the PSA, the Interconnection Agreement and PPA, referenced in my testimony as the "Definitive Agreements," were provided to bidders. Bidders were given an opportunity to submit two rounds of comments on those drafts. The first round of comments took place before bids were submitted. To the extent that bidders' first-round comments were accepted by VY, they were incorporated into marked versions of the Definitive Agreements that were provided to bidders before their bids were due. In the second round of comments, bidders submitted any requested changes to the revised Definitive Agreements in their bid packages.

### **Selection**

Once the bids were received, JPMorgan evaluated the financial terms of the bids and presented its recommendation to the Vermont Yankee Board of Directors. Similarly, Downs Rachlin & Martin PLLC and Ropes & Gray "the two law firms retained by Vermont Yankee for this transaction" evaluated the legal terms of the bids and presented their findings to Vermont Yankee's board. Informed by the financial and legal recommendations of its advisors, Vermont Yankee's board voted to pursue negotiations with Entergy. Negotiations of contract and financial terms continued through August 14, 2001. On the morning of August 15, 2001, Vermont Yankee and Entergy entered into a PSA for the Station.